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SEP 05 2007

**OFFICE OF PETITIONS**

In re Application of :  
Daniel M. Marks et al :  
Application No. 10/666,560 : **DECISION DISMISSING PETITIONS**  
Filed: September 22, 2003 : **UNDER 37 CFR 1.78(a)(3) AND (a)(6)**  
Attorney Docket No. 110293.134 US1 :

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed March 29, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications noted in the accompanying Supplemental Application Data Sheet.<sup>1</sup>

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(iii) and 1.78(a)(5)(i) and 1.78(a)(5)(iii) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the above requirements, which requirements were met prior to issuance of this application into a patent. However, in view of the issuance of this application into Patent No. 7,252,589 on August 7, 2007, and as the claim for priority to the nonprovisional and provisional applications did not appear on the patent as issued, a Certificate of Correction (and \$100 fee) is required before the petition can be granted. The form for the Certificate of Correction may be found under Forms on the USPTO Website.

<sup>1</sup> The existence of this renewed petition was only recently discovered. As this petition was miscoded, this petition did not come to the attention of the undersigned until recently.

A renewed petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6), along with request for a certificate of correction and fee of \$100, must be submitted before the petition can be granted.

Further correspondence with respect to this matter should be addressed as follows:

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By fax:                    (571) 273-8300  
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The centralized facsimile number is **(571) 273-8300**.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions